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**BZA-1862**  
**GERALD & JESSICA BECK**  
**Variances**

**STAFF REPORT**  
**August 16, 2012**

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**REQUEST MADE, PROPOSED USE, LOCATION:**

Petitioners, who are the owners and represented by Andy Gutwein, are requesting the following variances:

1. To eliminate the required 20' Type C bufferyard on all sides of the property (UZO 4-9-3-a); and
2. To eliminate the paving requirement for parking spaces and maneuvering aisle (UZO 4-6-15-a)

The property is the location of the former Monitor School (closed in 1967) and then later New Directions, Inc. Petitioners intend on locating their contracting business specializing in excavation work for basements and foundations (SIC 15) at the site located at 360 N 775 E in Perry 21 (NE) 23-3.

**AREA ZONING PATTERNS:**

The property, currently zoned I2, was rezoned from AW by the County Commissioners in July 2012 (Z-2496). Surrounding to the north, west, south land is zoned AW, Agricultural Wooded. Land to the east is zoned A, Agricultural.

A special exception was approved by the ABZA for this land in December 2003 for New Directions Inc. for an alcohol/drug rehabilitation and residential center (SIC 836) with accessory vocational rehabilitation and job training center (SIC 833). After New Directions vacated the property in 2007, the building fell into disrepair and was the subject of violation of the Unsafe Structures ordinance adopted by the County. The most recent ABZA action in the area was a special exception granted in 2006 for land to the northwest for a cell tower (BZA-1728).

**AREA LAND USE PATTERNS:**

The school building that housed New Directions has been demolished after a fire in 2010; all that remains is a pile of bricks and building rubble. There is an existing pole structure at the north end of the property. The site plan indicates that building will stay. Petitioners intend on constructing two additional buildings (60' x 120' and 80' x 160').

Surrounding the site is a mix of large lot residential and agricultural uses. Directly across CR 775 E are two homes, Mushroom Lane, with its handful of homes, is located about 500' to the north. Land directly to the west and south is undeveloped and partially wooded.

**TRAFFIC AND TRANSPORTATION:**

The site has access from CR 775 East at the top of the hill above the Wildcat Creek Valley. County Road 775 E is classified as rural secondary arterial, which averages about 850

vehicles per day based on traffic counts taken in 2011. The site currently has unrestricted access to the road and petitioners have not shown a driveway location; this access will need to be limited. County Highway will need to review a commercial driveway permit for the site.

Parking spaces and maneuvering aisles in the AW zone are not required to be paved; however when this property was rezoned to I2, that zoning district requires paving. Petitioner has not shown parking on the site plan. Petitioners' use requires one parking space per employee on the largest shift, plus one per 200 sq. ft. of office space. There is ample room on site for any required parking, though petitioners must submit a new site plan before receiving an improvement location permit showing the required number of parking spaces based on employees and office space.

#### **ENVIRONMENTAL AND UTILITY CONSIDERATIONS:**

Petitioners will need to coordinate plans with the County Surveyor's office regarding stormwater management and drainage.

The existing pole building is served by an individual septic system. (New Directions had an aeration basin/wastewater lagoon system, but is no longer in use. In fact, the portion of the property housing the lagoons has been sold off to a neighbor.) Petitioners will need to coordinate their development efforts with the state and county health departments.

#### **STAFF COMMENTS:**

Petitioners had this property successfully rezoned in July to accommodate their contracting business. At the time, they understood that all parking areas require paving and a 20' wide Type C bufferyard is required where I2 zoning abuts the surrounding AW zone.

There is a substantial amount of existing gravel on site from its use as New Directions. Gravel was permitted at that time because the zoning was AW which does not require paving. Petitioners are showing approximately 8,400 sq. ft. of new gravel will be added to what is currently on-site.

The ordinance states that any redevelopment of property—which includes rezoning—triggers the need for bufferyards. However, the nearest residence on the west side of CR 775 is over 400' from petitioners' property line, with an elevation difference of nearly 20' lower. Though there is plenty of open space surrounding petitioners' site with existing vegetation, the definition of a hardship cannot be a self-imposed situation. Petitioners initiated the rezone of the property to meet their proposed use knowing the I2 development standards.

Regarding the ballot items:

1. The Area Plan Commission at its August 15, 2012 meeting determined that the variances requested **ARE NOT** use variances.

And it is staff's opinion that:

2. Granting variance request #1 (eliminate bufferyards) **WILL NOT** be injurious to the

public health, safety, and general welfare of the community because existing open space and vegetation serve to protect neighboring uses. However, granting variance request #2 (eliminate paving) **WILL** be injurious to the public health safety and general welfare of the community because of particulate matters from gravel contributing to poor air quality.

3. Regarding variance #1 (eliminated the bufferyards), use and value of the area adjacent to the property **WILL NOT** be affected in a substantially adverse manner because there exists ample open space and existing vegetation to shield neighboring residences from the proposed use. Additionally, the nearest home is over 400' away and located 20' in elevation lower than petitioners' site. Regarding variance #2 (eliminate paving requirement), use and value of the area adjacent to the property **WILL** be affected in a substantially adverse manner because of the potential negative impact that almost an acre of gravel will have on additional particulate matter.
4. There is nothing unusual about this relatively flat site; therefore the terms of the zoning ordinance are being applied to a situation that **IS** common to other properties in the same zoning district.
5. Strict application of the terms of the zoning ordinance **WILL NOT** result in a hardship as defined in the zoning ordinance. Because petitioners knew the development standards of the I2 zone before they initiated the rezone, the situation is self-imposed and cannot be considered a hardship.

**Note:** Questions 5a. and 5b. need only be answered if a hardship is found in Question 5 above.

5a. The hardship involved **IS** self-imposed and based on economic gain. Regarding both variances, it is simply petitioners' unwillingness to pay to install the required bufferyards and pave the parking and maneuvering aisles that is necessitating these requests.

5b. The variances sought **DO NOT** provide only the minimum relief needed to alleviate the hardship because there is no hardship.

**STAFF RECOMMENDATION:**

Variance #1 (eliminate the bufferyard requirement): Denial

Variance #2 (eliminate the parking requirement): Denial

Before applying for an Improvement Location Permit, petitioner must submit a new site plan showing the required number of parking spaces and a County Highway driveway permit.